City of Richmond

# Report to Committee

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| **To:** | Planning Committee | **Date:** | April 14, 2011 |
| **From:** | Mike Kirk<br>Deputy Chief Administrative Officer | **File:** | ~~12-8060-20-8687/Vol 1~~<br>12-8060-20-8692 |
| **Re:** | **Housing Agreement (8600 Park Road) Bylaw No. 8692- to Secure Affordable Housing Units located in 8600 Park Road** | | |

## Staff Recommendation

1. That Housing Agreement (8600 Park Road) Bylaw No. 8692 be introduced and given first reading to permit the City, after adoption, to enter into an amended Housing Agreement with Saffron Homes Ltd., in connection with the property identified in Housing Agreement (8600 Park Road) Bylaw No. 8692, all in accordance with section 905 of the *Local Government Act*.

2. That after adoption of Housing Agreement (8600 Park Road) Bylaw No. 8692, the Chief Administrative Officer and Deputy Chief Administrative Officer be authorized to execute the amended Housing Agreement on behalf of the City and to take all required steps to file a notice of the Housing Agreement in the Land Title Office.

for Mike Kirk

Mike Kirk
Deputy Chief Administrative Officer
(604-276-4142)

Att. 3

| FOR ORIGINATING DEPARTMENT USE ONLY | | | |
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| **ROUTED TO:** | **CONCURRENCE** | | **CONCURRENCE OF GENERAL MANAGER** |
| Law | Y ☑ N ☐ | | |
| Development Applications | Y ☑ N ☐ | | |
| Budgets | Y ☑ N ☐ | | |
| **REVIEWED BY TAG** | YES ☑ | NO ☐ | **REVIEWED BY CAO** YES ☑ NO ☐ |

## Origin

The purpose of this report is to obtain first reading of Housing Agreement (8600 Park Road) Bylaw No. 8692 (**Attachment 1**). After this first reading and after all required notice is given, the bylaw shall go to public hearing at which point, consideration will be given to second and third reading of the Bylaw.

On February 8, 2010, Housing Agreement (8600 Park Road) Bylaw 8540 was adopted by Council to permit the City to enter into a Housing Agreement with Saffron Homes Ltd., to secure 21 low end market rental units at 8600 Park Road, as part of Rezoning Application No. 07-397063 and associated Zoning & Development Bylaw No. 8439.

On October 25, 2010, Council adopted the recommended changes to the City's Affordable Housing Strategy, whereby:

1. The City's maximum income thresholds and rent rates for low end market rental units would be adjusted to align with Core Need Income Threshold values and/or other applicable data released from Canada Mortgage and Housing Corporation (CMHC) to reflect current market and affordability trend data.

2. The annual income threshold and maximum permitted rent for affordable housing would be adjusted by staff once every calendar year.

3. The effective date for the adjustment would be applied to all Housing Agreements brought forward after the date of Council approval.

Developers expressed concern that the adjusted rates and thresholds would not apply to existing Housing Agreements executed prior to October 25, 2010. Council, in turn, requested staff to contact developers with previous approved Housing Agreements to:

1. Inform them that the adjusted income and rent values would apply to the Housing Agreements prior to October 25, 2010.

2. Provide them with an opportunity to apply for an adjustment to the income and rent values in their Housing Agreements.

Section 905(4) of the *Local Government Act* provides that a Housing Agreement may only be amended by bylaw.

## Analysis

The existing Housing Agreement restricts annual household income and rents in perpetuity for the 21 units, with the provision for an adjustment of the maximum annual household income and rental rates on an annual basis to ensure that the affordability terms established by the City remain in effect.

The property owner has since applied for its existing Housing Agreement to be reviewed for a rate adjustment which staff have completed. The table below compares the maximum total

household income and monthly rent values in the existing Housing Agreement to the proposed, amended Housing Agreement (**Attachment 2**) for the 21 affordable low end market rent units:

| **Unit Type** | **Maximum Monthly Rent** | | **Total Household Annual Income** | |
|---|---|---|---|---|
| | *Existing Housing Agreement* | *Amended Housing Agreement* | *Existing Housing Agreement* | *Amended Housing Agreement* |
| 20 one-bedroom units | $650 | $875 | $30,500 | $35,000 |
| 1 three-bedroom units | $930 | $1,275 | $42,000 | $51,000 |

Staff have conducted the requested review and are proposing rate adjustments for the Saffron Homes Ltd. development situated at 8600 Park Road in accordance with Council's October 25, 2010 direction. The amended Housing Agreement shall also contain additional updated terms and conditions consistent with current housing agreements being approved by the City.

After adoption of Housing Agreement (8600 Park Road) Bylaw No. 8692, the City will be able to enter into an amended Housing Agreement with Saffron Homes Ltd. reflecting the October 25, 2010 changes to the City's Affordable Housing Strategy in connection with securing 21 affordable units in a development situated at 8600 Park Road.

A public hearing will be required, with normal notification to all residents within 50 metres from the property line **(Attachment 3)**.

This report and bylaw are consistent with Council's adopted term goal:

*Improve the effectiveness of the delivery of social services in the City through the development and implementation of a Social and Community Services Strategy that includes increased social housing, implementation of the campus of care concept and an emergency shelter for women.*

## Financial Impact

Administration of this Housing Agreement will be covered by existing City resources.

**Conclusion**

In accordance with the *Local Government Act* (Section 905), adoption of Housing Agreement (8600 Park Road) Bylaw No. 8692 is required to permit the City to enter into an updated Housing Agreement to reflect October 25, 2010 changes to the City's Affordable Housing Strategy.

It is thus recommended that first reading be given to Housing Agreement (8600 Park Road) Bylaw No. 8692.

Dena Kae Beno
Affordable Housing Coordinator
(604-247-4946 )

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| Attachment 1 | Bylaw No. 8692 | Doc #3197257 |
| Attachment 2 | Housing Agreement | Doc #3143512 v.3 |
| Attachment 3 | Property Map | Doc #3200554 |

City of Richmond

**Bylaw 8692**

## Housing Agreement (8600 Park Road) Bylaw No. 8692

The Council of the City of Richmond enacts as follows:

1. The Mayor and City Clerk for the City of Richmond are authorized to execute and deliver a housing agreement, substantially in the form set out as Schedule A to this Bylaw, with the owner of the land legally described as:

   PID: 028-037-847 Lot 1 Section 9 Block 4 North Range 6 West NWD Plan BCP 42365

2. The Deputy Chief Administrative Officer for the City of Richmond is authorized to cause notice of the housing agreement to be registered in the Land Title Office.

3. This Bylaw may be cited as **"Housing Agreement (8600 Park Road) Bylaw No. 8692".**

FIRST READING _____

SECOND READING _____

THIRD READING _____

LEGAL REQUIREMENTS SATISFIED _____

ADOPTED _____

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor

_____ MAYOR

_____ CORPORATE OFFICER

Schedule A

To Housing Agreement (8600 Park Road) Bylaw No. 8692

HOUSING AGREEMENT BETWEEN SAFFRON HOMES LTD. AND CITY OF RICHMOND IN RELATION TO 8600 PARK ROAD

# HOUSING AGREEMENT
## (Section 905 *Local Government Act*)

**THIS AGREEMENT** is dated for reference the 12th day of April, 2011.

**BETWEEN:**

**SAFFRON HOMES LTD.**
**(Inc. No. BC0785445)**
a company duly incorporated under the laws of the Province of British Columbia and having its offices at 3rd Floor, 1258 West Pender Street Vancouver, British Columbia, V6E 4B1

(the "Owner" as more fully defined in section 1.1 of this Agreement)

**AND:**

**CITY OF RICHMOND**
a municipal corporation pursuant to the *Local Government Act* and having its offices at 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1

(the "City" as more fully defined in section 1.1 of this Agreement)

**WHEREAS:**

A. Section 905 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;

B. The Owner is the registered owner of the Lands (as hereinafter defined);

C. As a condition of approving Rezoning Application RZ 07-387063 to rezone the Lands, the Owner was required to register the City's standard Housing Agreement(s) to secure at least twenty-one (21) Affordable Housing Units (as hereinafter defined) being constructed on the Lands;

D. A Housing Agreement was entered into between the City and the Owner and a notice of it was filed under number BB1454175 in the Land Title Office on February 23, 2010; and

E. The City and the Owner have agreed to amend certain of the terms of the Housing Agreement and therefore the Owner and the City wish to enter into this Agreement (as hereinafter defined) to provide the Affordable Housing Units (as hereinafter defined) on the terms and conditions set out in this Agreement.

In consideration of $10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

## ARTICLE 1
## DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words have the following meanings:

(a) **"Affordable Housing Unit"** means a Dwelling Unit or Dwelling Units designated as such in accordance with a building permit and/or development permit issued by the City and/or, if applicable, in accordance with any rezoning consideration applicable to the development on the Lands and includes, without limiting the generality of the foregoing, the Dwelling Unit charged by this Agreement;

(b) **"Agreement"** means this agreement together with all schedules, attachments and priority agreements attached hereto;

(c) **"Building 1"** means the building identified as Building 1 on the plan attached hereto as Schedule "A";

(d) **"Building 2"** means the building identified as Building 2 on the plan attached hereto as Schedule "A";

(e) **"City"** means the City of Richmond;

(f) **"CPI"** means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;

(g) **"Daily Amount"** means $100.00 per day as of January 1, 2009 adjusted annually thereafter by adding thereto an amount calculated by multiplying $100.00 by the percentage change in the CPI since January 1, 2009, to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 6.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the City of the Daily Amount in any particular year shall be final and conclusive;

(h) **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, and includes single family detached dwellings,

duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan and includes, where the context permits, an Affordable Housing Unit;

(i) **"Eligible Tenant"** means a Family having a cumulative annual income of:

(i) in respect to a bachelor unit, $31,500 or less;

(ii) in respect to a one bedroom unit, $35,000 or less;

(iii) in respect to a two bedroom unit, $42,500 or less; or

(iv) in respect to a three or more bedroom unit, $51,000 or less

provided that, commencing July 1, 2010, the annual incomes set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as the case may be, an amount calculated that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the event that, in applying the values set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*. In the absence of obvious error or mistake, any calculation by the City of an Eligible Tenant's permitted income in any particular year shall be final and conclusive;

(j) **"Family"** means:

(i) a person;

(ii) two or more persons related by blood, marriage or adoption; or

(iii) a group of not more than 6 persons who are not related by blood, marriage or adoption

(k) **"Housing Covenant"** means the agreements, covenants and charges granted by the Owner to the City (which includes covenants pursuant to section 219 of the *Land Title Act*) charging the Lands registered on the ___ day of ____, 2011 under number _____;

(l) **"Interpretation Act"** means the *Interpretation Act,* R.S.B.C. 1996, Chapter 238;

(m) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250;

(n) **"Lands"** means the following lands and premises situate in the City of Richmond and any part, including a building or a portion of a building, into which said land is Subdivided:

PID: 028-037-847
Lot 1 Section 9 Block 4 North Range 6 West New Westminster District Plan BCP42365

(o) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 1996, Chapter 323;

(p) **"LTO"** means the New Westminster Land Title Office or its successor;

(q) **"Owner"** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;

(r) **"Permitted Rent"** means no greater than:

(i) $788.00 a month for a bachelor unit;

(ii) $875.00 a month for a one bedroom unit;

(iii) $1,063.00 a month for a two bedroom unit; and

(iv) $1,275.00 a month for a three (or more) bedroom unit,

provided that, commencing July 1, 2010, the rents set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as the case may be, an amount calculated that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the event that, in applying the values set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*. In the absence of obvious error or mistake, any calculation by the City of the Permitted Rent in any particular year shall be final and conclusive;

(s) **"Real Estate Development Marketing Act"** means the *Real Estate Development Marketing Act,* S.B.C. 2004, Chapter 41;

(t) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78;

(u) **"Strata Property Act"** means *Strata Property Act* S.B.C. 1998, Chapter 43;

(v) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of

"cooperative interests" or "shared interest in land" as defined in the *Real Estate Development Marketing Act*;

(w) **"Tenancy Agreement"** means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit; and

(x) **"Tenant"** means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement.

1.2 In this Agreement:

(a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;

(b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;

(c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;

(d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;

(e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;

(f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;

(g) time is of the essence;

(h) all provisions are to be interpreted as always speaking;

(i) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes an Eligible Tenant, agent, officer and invitee of the party;

(j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and

(k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

## ARTICLE 2
## USE AND OCCUPANCY OF AFFORDABLE HOUSING UNITS

2.1 The Owner agrees that each Affordable Housing Unit may only be used as a permanent residence occupied by one Eligible Tenant. An Affordable Housing Unit must not be occupied by the Owner, the Owner's family members (unless the Owner's family members qualify as Eligible Tenants), or any tenant or guest of the Owner, other than an Eligible Tenant.

2.2 Within 30 days after receiving notice from the City, the Owner must, in respect of each Affordable Housing Unit, provide to the City a statutory declaration, substantially in the form (with, in the City Solicitor's discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Owner, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Affordable Housing Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City such further statutory declarations as requested by the City in respect to an Affordable Housing Unit if, in the City's absolute determination, the City believes that the Owner is in breach of any of its obligations under this Agreement.

2.3 The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

## ARTICLE 3
## DISPOSITION AND ACQUISITION OF AFFORDABLE HOUSING UNITS

3.1 The Owner will not permit an Affordable Housing Unit Tenancy Agreement to be subleased or assigned.

3.2 If this Housing Agreement encumbers more than one Affordable Housing Unit, then the Owner may not, without the prior written consent of the City Solicitor, sell or transfer less than five (5) Affordable Housing Units in a single or related series of transactions with the result that when the purchaser or transferee of the Affordable Housing Units becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than five (5) Affordable Housing Units.

3.3 The Owner must not rent, lease, license or otherwise permit occupancy of any Affordable Housing Unit except to an Eligible Tenant and except in accordance with the following additional conditions:

(a) the Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;

(b) the monthly rent payable for the Affordable Housing Unit will not exceed the Permitted Rent applicable to that class of Affordable Housing Unit;

(c) the Owner will not require the Tenant or any permitted occupant to pay any strata fees, strata property contingency reserve fees or any extra charges or fees for use of any common property, limited common property, or other common areas, facilities or amenities, or for sanitary sewer, storm sewer, water, other utilities, property or similar tax; provided, however, if the Affordable Housing Unit is a strata unit and the following costs are not part of strata or similar fees, an Owner may charge the Tenant the Owner's cost, if any, of providing cablevision, telephone, other telecommunications, gas, or electricity fees, charges or rates;

(d) the Owner will attach a copy of this Agreement to every Tenancy Agreement;

(e) the Owner will include in the Tenancy Agreement a clause requiring the Tenant and each permitted occupant of the Affordable Housing Unit to comply with this Agreement;

(f) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:

(i) an Affordable Housing Unit is occupied by a person or persons other than an Eligible Tenant;

(ii) the annual income of an Eligible Tenant rises above the applicable maximum amount specified in section 1.1(i) of this Agreement;

(iii) the Affordable Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;

(iv) the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or

(v) the Tenant subleases the Affordable Housing Unit or assigns the Tenancy Agreement in whole or in part,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination. Except for section 3.3(f)(ii) of this Agreement *[Termination of Tenancy Agreement if Annual Income of Tenant rises above amount prescribed in section 1.1(i) of this Agreement]*, the notice of termination shall provide that the termination of the tenancy shall be effective 30 days following the date of the notice of termination. In respect to section 3.3(f)(ii) of this Agreement, termination shall be effective on the day that is 6 months following the date that the Owner provided the notice of termination to the Tenant;

(g) the Tenancy Agreement will identify all occupants of the Affordable Housing Unit and will stipulate that anyone not identified in the Tenancy Agreement will

be prohibited from residing at the Affordable Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and

(h) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement to the City upon demand.

3.4 If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant and all other persons that may be in occupation of the Affordable Housing Unit to vacate the Affordable Housing Unit on or before the effective date of termination.

## ARTICLE 4
## DEMOLITION OF AFFORDABLE HOUSING UNIT

4.1 The Owner will not demolish an Affordable Housing Unit unless:

(a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Affordable Housing Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or

(b) the Affordable Housing Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the City in its sole discretion,

and, in each case, a demolition permit for the Affordable Housing Unit has been issued by the City and the Affordable Housing Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy any replacement Dwelling Unit in compliance with this Agreement and the Housing Covenant both of which will apply to any replacement Dwelling Unit to the same extent and in the same manner as those agreements apply to the original Dwelling Unit, and the Dwelling Unit must be approved by the City as an Affordable Housing Unit in accordance with this Agreement.

## ARTICLE 5
## STRATA CORPORATION BYLAWS

5.1 This Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any Subdivided parcel of the Lands.

5.2 Any strata corporation bylaw which prevents, restricts or abridges the right to use the Affordable Housing Units as rental accommodation will have no force and effect.

5.3 No strata corporation shall pass any bylaws preventing, restricting or abridging the use of the Affordable Housing Units as rental accommodation.

5.4 No strata corporation shall pass any bylaw or approve any levies which would result in only the Owner or the Tenant or any other permitted occupant of an Affordable Housing Unit (and not include all the owners, tenants, or any other permitted occupants of all the strata lots in the applicable strata plan which are not Affordable Housing Units) paying any extra charges or fees for the use of any common property, limited common property or other common areas, facilities, or amenities of the strata corporation.

5.5 The strata corporation shall not pass any bylaw or make any rule which would restrict the Owner or the Tenant or any other permitted occupant of an Affordable Housing Unit from using and enjoying any common property, limited common property or other common areas, facilities or amenities of the strata corporation except on the same basis that governs the use and enjoyment of any common property, limited common property or other common areas, facilities or amenities of the strata corporation by all the owners, tenants, or any other permitted occupants of all the strata lots in the applicable strata plan which are not Affordable Housing Units.

## ARTICLE 6
## DEFAULT AND REMEDIES

6.1 The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or in equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of the Permitted Rent or the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay the Daily Amount to the City for every day that the breach continues after ten (10) days written notice from the City to the Owner stating the particulars of the breach. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period, if any, has expired. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.

6.2 The Owner acknowledges and agrees that a default by the Owner of any of its promises, covenants, representations or warranties set-out in the Housing Covenant shall also constitute a default under this Agreement.

## ARTICLE 7
## MISCELLANEOUS

7.1 **Housing Agreement**

The Owner acknowledges and agrees that:

(a) this Agreement includes a housing agreement entered into under section 905 of the *Local Government Act*;

(b) where an Affordable Housing Unit is a separate legal parcel the City may file notice of this Agreement in the LTO against title to the Affordable Housing Unit

and, in the case of a strata corporation, may note this Agreement on the common property sheet; and

(c) where the Lands have not yet been Subdivided to create the separate parcels to be charged by this Agreement, the City may file a notice of this Agreement in the LTO against the title to the Lands. If this Agreement is filed in the LTO as a notice under section 905 of the *Local Government Act* prior to the Lands having been Subdivided, and it is the intention that this Agreement is, once separate legal parcels are created and/or the Lands are subdivided, to charge and secure only the legal parcels or Subdivided Lands which contain the Affordable Housing Units then City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to partially discharge this Agreement accordingly. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect and, but for the partial discharge, otherwise unamended. Further, the Owner acknowledges and agrees that in the event that the Affordable Housing Unit is in a strata corporation, this Agreement shall remain noted on the strata corporation's common property sheet.

7.2 **Modification**

Subject to section 7.1 of this Agreement, this Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

7.3 **Management**

The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Housing Units and will permit representatives of the City to inspect the Affordable Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Affordable Housing Units.

7.4 **Indemnity**

The Owner will indemnify, protect and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

(u) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;

(v) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or

(w) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

7.5 **Release**

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

(u) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Affordable Housing Unit under this Agreement; and/or

(v) the exercise by the City of any of its rights under this Agreement or an enactment.

7.6 **Survival**

The obligations of the Owner set out in this Agreement will survive termination or discharge of this Agreement.

7.7 **Priority**

The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City Solicitor, will be noted against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in advance in writing by the City Solicitor or in favour of the City, and that a notice under section 905(5) of the *Local Government Act* will be filed on the title to the Lands;

7.8 **City's Powers Unaffected**

This Agreement does not:

(u) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;

(v) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;

(w) affect or limit any enactment relating to the use or subdivision of the Lands; or

(x) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

7.9 **Agreement for Benefit of City Only**

The Owner and the City agree that:

(u) this Agreement is entered into only for the benefit of the City;

(v) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Affordable Housing Unit; and

(w) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

7.10 **No Public Law Duty**

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

7.11 **Notice**

Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed:

To: Clerk, City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1

And to: City Solicitor
City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

7.12 **Enuring Effect**

This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

7.13 **Severability**

If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

7.14 **Waiver**

All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

7.15 **Sole Agreement**

This Agreement, and any documents signed by the Owners contemplated by this Agreement (including, without limitation, the Housing Covenant), represent the whole agreement between the City and the Owner respecting the use and occupation of the Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

7.16 **Further Assurance**

Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

7.17 **Covenant Runs with the Lands**

This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Lands.

7.18 **Equitable Remedies**

The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

7.19 **Limitation on Owner's Obligations**

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands provided however that notwithstanding that the Owner is no longer the registered owner of the Lands, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.

7.20 **No Joint Venture**

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

7.21 **Applicable Law**

Unless the context otherwise requires, the laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

7.22 **Deed and Contract**

By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

7.23 **Joint and Several**

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

| CITY OF RICHMOND |
| --- |
| APPROVED for content by originating dept. |
| APPROVED for legality by Solicitor |
| DATE OF COUNCIL APPROVAL |

**SAFFRON HOMES LTD.**
by its authorized signatories:

Per:_____

Per:_____

**CITY OF RICHMOND**
by its authorized signatories:

Per:

_____

_____

**Schedule A to the Housing Agreement**

**Plan of Buildings 1, 2 and 3**

**Appendix A to the Housing Agreement**

**STATUTORY DECLARATION**

| | | |
|---|---|---|
| **CANADA** | ) | **IN THE MATTER OF A** |
| | ) | **HOUSING AGREEMENT WITH** |
| **PROVINCE OF BRITISH COLUMBIA** | ) | **THE CITY OF RICHMOND** |
| | ) | **("Housing Agreement")** |

TO WIT:

**I,** _____ of _____, British Columbia, do solemnly declare that:

1. I am the owner or authorized signatory of the owner of _____ (the "Affordable Housing Unit"), and make this declaration to the best of my personal knowledge.

2. This declaration is made pursuant to the Housing Agreement in respect of the Affordable Housing Unit.

3. For the period from _____ _____ to _____ the Affordable Housing Unit was occupied only by the Eligible Tenants (as defined in the Housing Agreement) whose names and current addresses and whose employer's names and current addresses appear below:

   [Names, addresses and phone numbers of Eligible Tenants *and their employer(s)*]:

4. The rent charged each month for the Affordable Housing Unit is as follows:

   (a) the monthly rent on the date *365* days before this date of this statutory declaration: $_____ per month;

   (b) the rent on the date of this statutory declaration: $_____; and

   (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: $_____.

5. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against the land on which the Affordable Housing Unit is situated and confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.

6. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

| | | |
|---|---|---|
| DECLARED BEFORE ME at the City of Richmond, in the Province of British Columbia, this _____ day of _____, 2011. | ) | |
| _____ | ) | _____ |
| A Commissioner for Taking Affidavits in the Province of British Columbia | ) | DECLARANT |

## PRIORITY AGREEMENT

In respect to a Housing Agreement (the "Housing Agreement") made pursuant to section 905 of the of the *Local Government Act* between the City of Richmond and Saffron Homes Ltd. in respect to the lands and premises legally known and described as PID: 028-037-847 Lot 1 Section 9 Block 4 North Range 6 West NWD Plan BCP42365 (the "Lands").

**THE BANK OF NOVA SCOTIA** (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers BB1943004 and BB1943005, respectively, (the "Bank Charges").

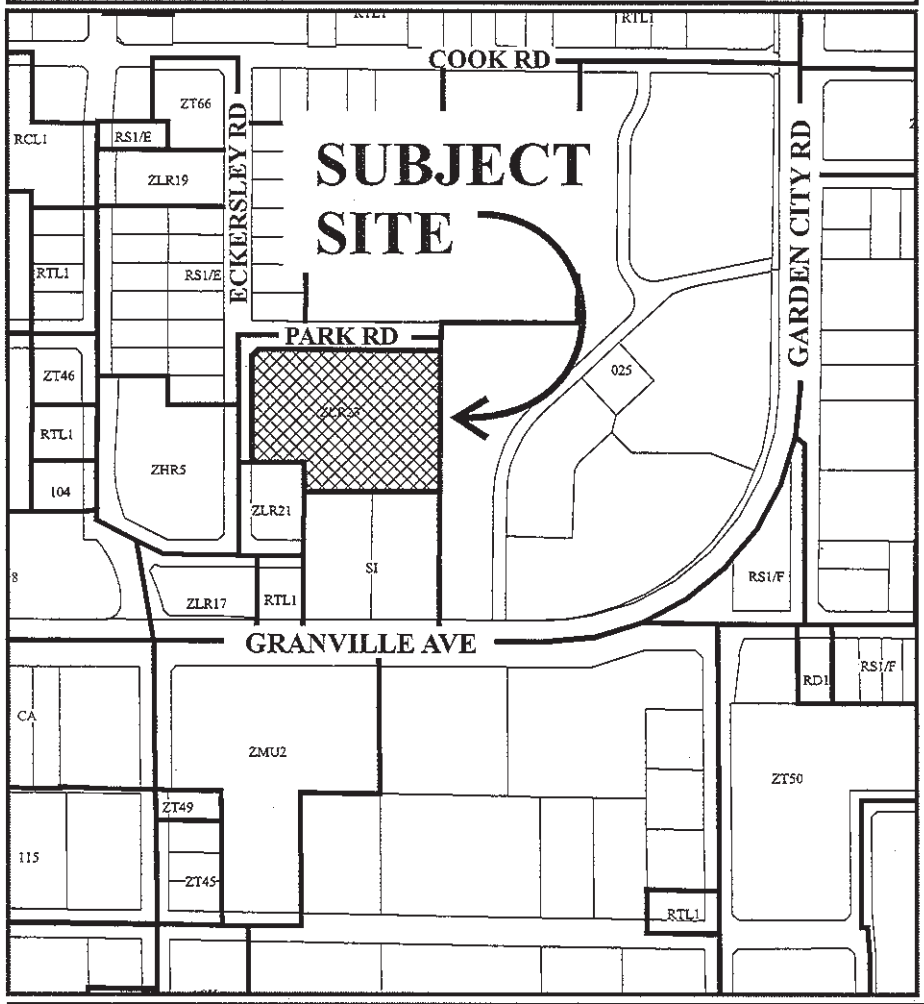
The Chargeholder, being the holder of the Bank Charges, by signing below, in consideration of the payment of Ten Dollars ($10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of the Housing Agreement and hereby covenants that the Housing Agreement shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges The grant of priority is irrevocable, unqualified and without reservation or limitation.

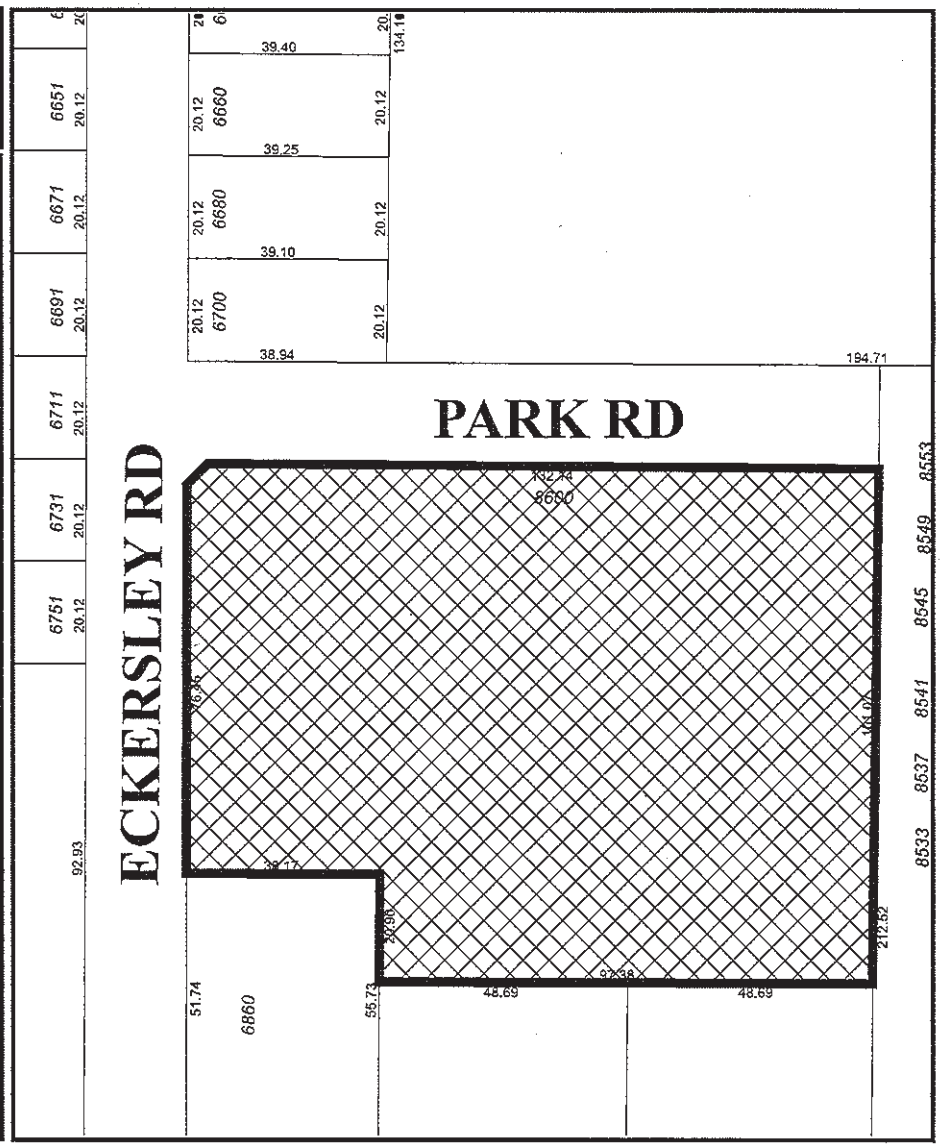
**THE BANK OF NOVA SCOTIA**
by its authorized signatories:

Per:_____

Per:_____

# City of Richmond




# Bylaw No. 8692

Original Date: 04/14/11

Revision Date:

Note: Dimensions are in METRES

ATTACHMENT 3

City of Richmond

**Bylaw 8692**

## Housing Agreement (8600 Park Road) Bylaw No. 8692

The Council of the City of Richmond enacts as follows:

1. The Mayor and City Clerk for the City of Richmond are authorized to execute and deliver a housing agreement, substantially in the form set out as Schedule A to this Bylaw, with the owner of the land legally described as:

   PID: 028-037-847 Lot 1 Section 9 Block 4 North Range 6 West NWD Plan BCP 42365

2. The Deputy Chief Administrative Officer for the City of Richmond is authorized to cause notice of the housing agreement to be registered in the Land Title Office.

3. This Bylaw may be cited as **"Housing Agreement (8600 Park Road) Bylaw No. 8692".**

| | |
|---|---|
| FIRST READING | MAY 09 2011 |
| SECOND READING | |
| THIRD READING | |
| LEGAL REQUIREMENTS SATISFIED | |
| ADOPTED | |

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor

MAYOR

CORPORATE OFFICER

3197257

Schedule A

To Housing Agreement (8600 Park Road) Bylaw No. 8692

HOUSING AGREEMENT BETWEEN SAFFRON HOMES LTD. AND CITY OF RICHMOND IN RELATION TO 8600 PARK ROAD

# HOUSING AGREEMENT
## (Section 905 *Local Government Act*)

**THIS AGREEMENT** is dated for reference the 12th day of April, 2011.

**BETWEEN:**

**SAFFRON HOMES LTD.**
**(Inc. No. BC0785445)**
a company duly incorporated under the laws of the Province of British Columbia and having its offices at 3rd Floor, 1258 West Pender Street Vancouver, British Columbia, V6E 4B1

(the "Owner" as more fully defined in section 1.1 of this Agreement)

**AND:**

**CITY OF RICHMOND**
a municipal corporation pursuant to the *Local Government Act* and having its offices at 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1

(the "City" as more fully defined in section 1.1 of this Agreement)

**WHEREAS:**

A. Section 905 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;

B. The Owner is the registered owner of the Lands (as hereinafter defined);

C. As a condition of approving Rezoning Application RZ 07-387063 to rezone the Lands, the Owner was required to register the City's standard Housing Agreement(s) to secure at least twenty-one (21) Affordable Housing Units (as hereinafter defined) being constructed on the Lands;

D. A Housing Agreement was entered into between the City and the Owner and a notice of it was filed under number BB1454175 in the Land Title Office on February 23, 2010; and

E. The City and the Owner have agreed to amend certain of the terms of the Housing Agreement and therefore the Owner and the City wish to enter into this Agreement (as hereinafter defined) to provide the Affordable Housing Units (as hereinafter defined) on the terms and conditions set out in this Agreement.

In consideration of $10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

## ARTICLE 1
## DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words have the following meanings:

(a) **"Affordable Housing Unit"** means a Dwelling Unit or Dwelling Units designated as such in accordance with a building permit and/or development permit issued by the City and/or, if applicable, in accordance with any rezoning consideration applicable to the development on the Lands and includes, without limiting the generality of the foregoing, the Dwelling Unit charged by this Agreement;

(b) **"Agreement"** means this agreement together with all schedules, attachments and priority agreements attached hereto;

(c) **"Building 1"** means the building identified as Building 1 on the plan attached hereto as Schedule "A";

(d) **"Building 2"** means the building identified as Building 2 on the plan attached hereto as Schedule "A";

(e) **"City"** means the City of Richmond;

(f) **"CPI"** means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;

(g) **"Daily Amount"** means $100.00 per day as of January 1, 2009 adjusted annually thereafter by adding thereto an amount calculated by multiplying $100.00 by the percentage change in the CPI since January 1, 2009, to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 6.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the City of the Daily Amount in any particular year shall be final and conclusive;

(h) **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, and includes single family detached dwellings,

duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan and includes, where the context permits, an Affordable Housing Unit;

(i) **"Eligible Tenant"** means a Family having a cumulative annual income of:

(i) in respect to a bachelor unit, $31,500 or less;

(ii) in respect to a one bedroom unit, $35,000 or less;

(iii) in respect to a two bedroom unit, $42,500 or less; or

(iv) in respect to a three or more bedroom unit, $51,000 or less

provided that, commencing July 1, 2010, the annual incomes set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as the case may be, an amount calculated that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the event that, in applying the values set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*. In the absence of obvious error or mistake, any calculation by the City of an Eligible Tenant's permitted income in any particular year shall be final and conclusive;

(j) **"Family"** means:

(i) a person;

(ii) two or more persons related by blood, marriage or adoption; or

(iii) a group of not more than 6 persons who are not related by blood, marriage or adoption

(k) **"Housing Covenant"** means the agreements, covenants and charges granted by the Owner to the City (which includes covenants pursuant to section 219 of the *Land Title Act*) charging the Lands registered on the ___ day of ____, 2011 under number _____;

(l) **"Interpretation Act"** means the *Interpretation Act,* R.S.B.C. 1996, Chapter 238;

(m) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250;

(n) **"Lands"** means the following lands and premises situate in the City of Richmond and any part, including a building or a portion of a building, into which said land is Subdivided:

PID: 028-037-847
Lot 1 Section 9 Block 4 North Range 6 West New Westminster District Plan BCP42365

(o) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 1996, Chapter 323;

(p) **"LTO"** means the New Westminster Land Title Office or its successor;

(q) **"Owner"** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;

(r) **"Permitted Rent"** means no greater than:

(i) $788.00 a month for a bachelor unit;

(ii) $875.00 a month for a one bedroom unit;

(iii) $1,063.00 a month for a two bedroom unit; and

(iv) $1,275.00 a month for a three (or more) bedroom unit,

provided that, commencing July 1, 2010, the rents set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as the case may be, an amount calculated that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the event that, in applying the values set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*. In the absence of obvious error or mistake, any calculation by the City of the Permitted Rent in any particular year shall be final and conclusive;

(s) **"Real Estate Development Marketing Act"** means the *Real Estate Development Marketing Act,* S.B.C. 2004, Chapter 41;

(t) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78;

(u) **"Strata Property Act"** means *Strata Property Act* S.B.C. 1998, Chapter 43;

(v) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of

"cooperative interests" or "shared interest in land" as defined in the *Real Estate Development Marketing Act*;

(w) **"Tenancy Agreement"** means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit; and

(x) **"Tenant"** means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement.

1.2 In this Agreement:

(a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;

(b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;

(c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;

(d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;

(e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;

(f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;

(g) time is of the essence;

(h) all provisions are to be interpreted as always speaking;

(i) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes an Eligible Tenant, agent, officer and invitee of the party;

(j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and

(k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

## ARTICLE 2
## USE AND OCCUPANCY OF AFFORDABLE HOUSING UNITS

2.1 The Owner agrees that each Affordable Housing Unit may only be used as a permanent residence occupied by one Eligible Tenant. An Affordable Housing Unit must not be occupied by the Owner, the Owner's family members (unless the Owner's family members qualify as Eligible Tenants), or any tenant or guest of the Owner, other than an Eligible Tenant.

2.2 Within 30 days after receiving notice from the City, the Owner must, in respect of each Affordable Housing Unit, provide to the City a statutory declaration, substantially in the form (with, in the City Solicitor's discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Owner, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Affordable Housing Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City such further statutory declarations as requested by the City in respect to an Affordable Housing Unit if, in the City's absolute determination, the City believes that the Owner is in breach of any of its obligations under this Agreement.

2.3 The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

## ARTICLE 3
## DISPOSITION AND ACQUISITION OF AFFORDABLE HOUSING UNITS

3.1 The Owner will not permit an Affordable Housing Unit Tenancy Agreement to be subleased or assigned.

3.2 If this Housing Agreement encumbers more than one Affordable Housing Unit, then the Owner may not, without the prior written consent of the City Solicitor, sell or transfer less than five (5) Affordable Housing Units in a single or related series of transactions with the result that when the purchaser or transferee of the Affordable Housing Units becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than five (5) Affordable Housing Units.

3.3 The Owner must not rent, lease, license or otherwise permit occupancy of any Affordable Housing Unit except to an Eligible Tenant and except in accordance with the following additional conditions:

(a) the Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;

(b) the monthly rent payable for the Affordable Housing Unit will not exceed the Permitted Rent applicable to that class of Affordable Housing Unit;

(c) the Owner will not require the Tenant or any permitted occupant to pay any strata fees, strata property contingency reserve fees or any extra charges or fees for use of any common property, limited common property, or other common areas, facilities or amenities, or for sanitary sewer, storm sewer, water, other utilities, property or similar tax; provided, however, if the Affordable Housing Unit is a strata unit and the following costs are not part of strata or similar fees, an Owner may charge the Tenant the Owner's cost, if any, of providing cablevision, telephone, other telecommunications, gas, or electricity fees, charges or rates;

(d) the Owner will attach a copy of this Agreement to every Tenancy Agreement;

(e) the Owner will include in the Tenancy Agreement a clause requiring the Tenant and each permitted occupant of the Affordable Housing Unit to comply with this Agreement;

(f) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:

(i) an Affordable Housing Unit is occupied by a person or persons other than an Eligible Tenant;

(ii) the annual income of an Eligible Tenant rises above the applicable maximum amount specified in section 1.1(i) of this Agreement;

(iii) the Affordable Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;

(iv) the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or

(v) the Tenant subleases the Affordable Housing Unit or assigns the Tenancy Agreement in whole or in part,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination. Except for section 3.3(f)(ii) of this Agreement *[Termination of Tenancy Agreement if Annual Income of Tenant rises above amount prescribed in section 1.1(i) of this Agreement]*, the notice of termination shall provide that the termination of the tenancy shall be effective 30 days following the date of the notice of termination. In respect to section 3.3(f)(ii) of this Agreement, termination shall be effective on the day that is 6 months following the date that the Owner provided the notice of termination to the Tenant;

(g) the Tenancy Agreement will identify all occupants of the Affordable Housing Unit and will stipulate that anyone not identified in the Tenancy Agreement will

be prohibited from residing at the Affordable Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and

(h) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement to the City upon demand.

3.4 If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant and all other persons that may be in occupation of the Affordable Housing Unit to vacate the Affordable Housing Unit on or before the effective date of termination.

## ARTICLE 4
## DEMOLITION OF AFFORDABLE HOUSING UNIT

4.1 The Owner will not demolish an Affordable Housing Unit unless:

(a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Affordable Housing Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or

(b) the Affordable Housing Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the City in its sole discretion,

and, in each case, a demolition permit for the Affordable Housing Unit has been issued by the City and the Affordable Housing Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy any replacement Dwelling Unit in compliance with this Agreement and the Housing Covenant both of which will apply to any replacement Dwelling Unit to the same extent and in the same manner as those agreements apply to the original Dwelling Unit, and the Dwelling Unit must be approved by the City as an Affordable Housing Unit in accordance with this Agreement.

## ARTICLE 5
## STRATA CORPORATION BYLAWS

5.1 This Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any Subdivided parcel of the Lands.

5.2 Any strata corporation bylaw which prevents, restricts or abridges the right to use the Affordable Housing Units as rental accommodation will have no force and effect.

5.3 No strata corporation shall pass any bylaws preventing, restricting or abridging the use of the Affordable Housing Units as rental accommodation.

5.4 No strata corporation shall pass any bylaw or approve any levies which would result in only the Owner or the Tenant or any other permitted occupant of an Affordable Housing Unit (and not include all the owners, tenants, or any other permitted occupants of all the strata lots in the applicable strata plan which are not Affordable Housing Units) paying any extra charges or fees for the use of any common property, limited common property or other common areas, facilities, or amenities of the strata corporation.

5.5 The strata corporation shall not pass any bylaw or make any rule which would restrict the Owner or the Tenant or any other permitted occupant of an Affordable Housing Unit from using and enjoying any common property, limited common property or other common areas, facilities or amenities of the strata corporation except on the same basis that governs the use and enjoyment of any common property, limited common property or other common areas, facilities or amenities of the strata corporation by all the owners, tenants, or any other permitted occupants of all the strata lots in the applicable strata plan which are not Affordable Housing Units.

## ARTICLE 6
## DEFAULT AND REMEDIES

6.1 The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or in equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of the Permitted Rent or the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay the Daily Amount to the City for every day that the breach continues after ten (10) days written notice from the City to the Owner stating the particulars of the breach. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period, if any, has expired. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.

6.2 The Owner acknowledges and agrees that a default by the Owner of any of its promises, covenants, representations or warranties set-out in the Housing Covenant shall also constitute a default under this Agreement.

## ARTICLE 7
## MISCELLANEOUS

### 7.1 Housing Agreement

The Owner acknowledges and agrees that:

(a) this Agreement includes a housing agreement entered into under section 905 of the *Local Government Act*;

(b) where an Affordable Housing Unit is a separate legal parcel the City may file notice of this Agreement in the LTO against title to the Affordable Housing Unit

and, in the case of a strata corporation, may note this Agreement on the common property sheet; and

(c) where the Lands have not yet been Subdivided to create the separate parcels to be charged by this Agreement, the City may file a notice of this Agreement in the LTO against the title to the Lands. If this Agreement is filed in the LTO as a notice under section 905 of the *Local Government Act* prior to the Lands having been Subdivided, and it is the intention that this Agreement is, once separate legal parcels are created and/or the Lands are subdivided, to charge and secure only the legal parcels or Subdivided Lands which contain the Affordable Housing Units then City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to partially discharge this Agreement accordingly. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect and, but for the partial discharge, otherwise unamended. Further, the Owner acknowledges and agrees that in the event that the Affordable Housing Unit is in a strata corporation, this Agreement shall remain noted on the strata corporation's common property sheet.

7.2 **Modification**

Subject to section 7.1 of this Agreement, this Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

7.3 **Management**

The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Housing Units and will permit representatives of the City to inspect the Affordable Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Affordable Housing Units.

7.4 **Indemnity**

The Owner will indemnify, protect and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

(u) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;

(v) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or

(w) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

7.5 **Release**

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

(u) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Affordable Housing Unit under this Agreement; and/or

(v) the exercise by the City of any of its rights under this Agreement or an enactment.

7.6 **Survival**

The obligations of the Owner set out in this Agreement will survive termination or discharge of this Agreement.

7.7 **Priority**

The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City Solicitor, will be noted against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in advance in writing by the City Solicitor or in favour of the City, and that a notice under section 905(5) of the *Local Government Act* will be filed on the title to the Lands;

7.8 **City's Powers Unaffected**

This Agreement does not:

(u) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;

(v) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;

(w) affect or limit any enactment relating to the use or subdivision of the Lands; or

(x) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

7.9 **Agreement for Benefit of City Only**

The Owner and the City agree that:

(u) this Agreement is entered into only for the benefit of the City;

(v) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Affordable Housing Unit; and

(w) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

7.10 **No Public Law Duty**

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

7.11 **Notice**

Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed:

To: Clerk, City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1

And to: City Solicitor
City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

7.12 **Enuring Effect**

This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

7.13 **Severability**

If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

7.14 **Waiver**

All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

7.15 **Sole Agreement**

This Agreement, and any documents signed by the Owners contemplated by this Agreement (including, without limitation, the Housing Covenant), represent the whole agreement between the City and the Owner respecting the use and occupation of the Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

7.16 **Further Assurance**

Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

7.17 **Covenant Runs with the Lands**

This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Lands.

7.18 **Equitable Remedies**

The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

7.19 **Limitation on Owner's Obligations**

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands provided however that notwithstanding that the Owner is no longer the registered owner of the Lands, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.

7.20 **No Joint Venture**

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

7.21 **Applicable Law**

Unless the context otherwise requires, the laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

7.22 **Deed and Contract**

By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

7.23 **Joint and Several**

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

| CITY OF RICHMOND |
| --- |
| APPROVED for content by originating dept. |
| APPROVED for legality by Solicitor |
| DATE OF COUNCIL APPROVAL |

**SAFFRON HOMES LTD.**
by its authorized signatories:

Per:_____

Per:_____

**CITY OF RICHMOND**
by its authorized signatories:

Per:

_____

_____

**Schedule A to the Housing Agreement**

**Plan of Buildings 1, 2 and 3**

**Appendix A to the Housing Agreement**

**STATUTORY DECLARATION**

| | | |
|---|---|---|
| **CANADA** | ) | **IN THE MATTER OF A** |
| | ) | **HOUSING AGREEMENT WITH** |
| **PROVINCE OF BRITISH COLUMBIA** | ) | **THE CITY OF RICHMOND** |
| | ) | **("Housing Agreement")** |

TO WIT:

**I,** _____ of _____, British Columbia, do solemnly declare that:

1. I am the owner or authorized signatory of the owner of _____ (the "Affordable Housing Unit"), and make this declaration to the best of my personal knowledge.

2. This declaration is made pursuant to the Housing Agreement in respect of the Affordable Housing Unit.

3. For the period from _____ _____ to _____ the Affordable Housing Unit was occupied only by the Eligible Tenants (as defined in the Housing Agreement) whose names and current addresses and whose employer's names and current addresses appear below:

   [Names, addresses and phone numbers of Eligible Tenants *and their employer(s)*]:

4. The rent charged each month for the Affordable Housing Unit is as follows:

   (a) the monthly rent on the date *365* days before this date of this statutory declaration: $_____ per month;

   (b) the rent on the date of this statutory declaration: $_____; and

   (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: $_____.

5. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against the land on which the Affordable Housing Unit is situated and confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.

6. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

| | | |
|---|---|---|
| DECLARED BEFORE ME at the City of Richmond, in the Province of British Columbia, this _____ day of _____, 2011. | ) | |
| _____ | ) | _____ |
| A Commissioner for Taking Affidavits in the Province of British Columbia | ) | DECLARANT |

## PRIORITY AGREEMENT

In respect to a Housing Agreement (the "Housing Agreement") made pursuant to section 905 of the of the *Local Government Act* between the City of Richmond and Saffron Homes Ltd. in respect to the lands and premises legally known and described as PID: 028-037-847 Lot 1 Section 9 Block 4 North Range 6 West NWD Plan BCP42365 (the "Lands").

**THE BANK OF NOVA SCOTIA** (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers BB1943004 and BB1943005, respectively, (the "Bank Charges").

The Chargeholder, being the holder of the Bank Charges, by signing below, in consideration of the payment of Ten Dollars ($10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of the Housing Agreement and hereby covenants that the Housing Agreement shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges The grant of priority is irrevocable, unqualified and without reservation or limitation.

**THE BANK OF NOVA SCOTIA**
by its authorized signatories:

Per:_____

Per:_____